

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TAMMY DOOLEY,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,

Defendant.

8:22CV334

**MEMORANDUM
AND ORDER**

This matter is before the Court on plaintiff Tammy Dooley’s (“Dooley”) Petition for Attorney’s Fees (Filing No. 22) under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). As pertinent here, the EAJA authorizes an award of “fees and other expenses” to a prevailing party in any civil action “brought by or against the United States,” unless the government’s position was “substantially justified or . . . special circumstances make an award unjust.” *Id.* § 2412(d)(1)(A).

On February 22, 2023, defendant Kilolo Kijakazi, Acting Commissioner of Social Security (“Commissioner”), moved the Court to (1) reverse her denial of Dooley’s application for disability benefits and (2) remand this case for further administrative proceedings (Filing No. 18). *See* 42 U.S.C. § 405(g). The Court granted the motion and remanded the case (Filing No. 20). Unsurprisingly, no one appealed, and that decision is now final.

Based on that decision, Dooley asserts the Commissioner’s initial determination that she was not disabled “was not substantially justified” under § 2412(d)(1)(A). She requests an award of attorney fees in the amount of \$3,070.88, which consists of 3.0 hours of attorney work in 2022 at \$234.95 per hour and 9.8 hours of attorney work in 2023 at

\$241.43 per hour.¹ The Commissioner does not object to Dooley's request but notes the fee award may be subject to offset under *Astrue v. Ratliff*, 560 U.S. 586, 593 (2010).

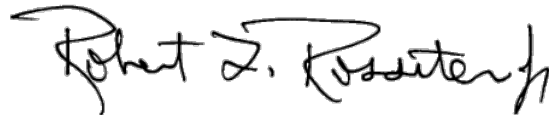
After careful review, the Court finds Dooley is a prevailing party entitled to an EAJA fee award of \$3,070.86 to be paid by the Social Security Administration. Dooley has satisfied the statutory requirements under the EAJA, *see* 28 U.S.C. § 2412(d)(1)(A), and her attorney-fee request is timely,² reasonable, and supported by the record. The fee award is payable to Dooley but—as requested—can be sent to her attorneys for distribution. *See Ratliff*, 560 U.S. at 589-90. Accordingly,

IT IS ORDERED:

1. Plaintiff Tammy Dooley's petition for attorney fees (Filing No. 22) under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), is granted.
2. Dooley is awarded attorney fees in the amount of \$3,070.86.
3. The Social Security Administration shall make the fee award payable to Dooley and deliver the payment to the Kappelman Law Firm at its address of record.
4. A separate judgment will issue.

Dated this 9th day of May 2023.

BY THE COURT:



Robert F. Rossiter, Jr.
Chief United States District Judge

¹The actual total for those hours and rates is \$3,070.86; the \$.02 difference is the result of a rounding issue caused by Dooley calculating the time for two different attorneys. For what it's worth, the Court's two cents is that the difference is immaterial.

²A prevailing party requesting an EAJA fee award based on a remand under sentence four of 42 U.S.C. § 405(g) must apply no later than thirty days after the judgment has been entered and the appeal period has run such that the judgment is no longer appealable. *See Pottsmith v. Barnhart*, 306 F.3d 526, 527-28 (8th Cir. 2002); *see also Shalala v. Schaefer*, 509 U.S. 292, 302 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 94-97 (1991).